

AMENDED IN ASSEMBLY APRIL 18, 2007

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

## ASSEMBLY BILL

No. 346

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**Introduced by Assembly Members Beall and Saldana**

February 14, 2007

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An act to add ~~Article 4 (commencing with Section 25685) to Chapter 16 of Division 9 of Section 25205~~ to the Business and Professions Code, relating to alcoholic beverages.

### LEGISLATIVE COUNSEL'S DIGEST

AB 346, as amended, Beall. ~~The Prevention of Youth Access to Alcoholic Beverages with Special Appeal to Minors Act of 2007.~~ *Alcoholic beverages: labels.*

The Alcoholic Beverage Control Act, administered by the Department of Alcoholic Beverage Control, regulates the sale and distribution of alcoholic beverages and the granting of licenses for the manufacture, distribution, and sale of alcoholic beverages within the state. The act also provides for specified labeling requirements for containers of alcoholic beverages sold within this state, as provided. ~~Under existing law, it is unlawful for a person to sell, furnish, give, or cause to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years, as provided.~~

This bill would ~~establish the Prevention of Youth Access to Alcoholic Beverages with Special Appeal to Minors Act of 2007, to prevent underage drinking of, and access to, alcoholic beverages with special appeal to minors, as defined~~ *require the Department of Alcoholic Beverage Control to promulgate regulations, on or before July 1, 2008, to require that any alcoholic beverage container sold within this state bear a label that includes specified information, whose dimensions shall*

*be determined by the department, making its alcohol content and its status as an alcoholic beverage easily discernible when the department determines that the alcoholic beverage fulfills specified criteria. This bill also makes findings and declarations with regard to the need for these labeling requirements.*

~~This bill would require beer manufacturers and wholesalers to submit specified information to the Department of Alcoholic Beverage Control in order for the department to determine whether that product or brand is an alcoholic beverage with special appeal to minors. This bill would require the department to post an annually updated list of those alcoholic beverages on its Internet homepage. This bill would provide that information submitted to the department is not a public record and makes findings with regard to that information.~~

~~This bill would provide that the containers of alcoholic beverages with special appeal to minors include specified information, including a statement of the alcohol content by volume.~~

~~This bill would also prohibit retail licensees who sell alcoholic beverages with special appeal to minors from engaging in specified activities, including displaying those alcoholic beverages within 5 feet of any nonalcoholic beverage and selling motor vehicle fuel.~~

The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified. This bill, by creating a new crime, would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. The Legislature finds and declares all of the*
- 2     *following:*
- 3     *(a) Many alcoholic beverages currently available in California*
- 4     *are packaged and labeled in a manner that is similar to packaging*
- 5     *and labels used for nonalcoholic beverages and products like*
- 6     *energy drinks, colas, sodas, fruit drinks and gelatins.*

1     ***(b) This packaging and labeling practice has the potential for***  
2 *confusing underage youth, parents, teachers, law enforcement*  
3 *personnel, retail employers that sell alcoholic beverages, and other*  
4 *members of the public regarding the alcoholic content of these*  
5 *beverages.*

6     ***(c) Ensuring that underage youth, parents, teachers, law***  
7 *enforcement personnel, retail employees that sell alcoholic*  
8 *beverages, and other members of the public are able to readily*  
9 *discern the fact that a particular product contains alcohol and the*  
10 *amount of alcohol the beverage contains is a high priority for*  
11 *California. California currently regulates information, including*  
12 *information regarding the contents of the container, located on*  
13 *containers of alcoholic beverages sold within the state.*

14     ***(d) The purpose of Section 25205 of the Business and***  
15 *Professions Code is to provide additional consumer information*  
16 *regarding the alcohol content on the container of specified*  
17 *alcoholic beverages as a means to reduce potential consumer*  
18 *confusion and is not intended to provide health information or a*  
19 *warning.*

20     ***SEC. 2. Section 25205 is added to the Business and Professions***  
21 *Code, to read:*

22     ***25205. (a) On or before July 1, 2008, the department shall***  
23 *promulgate regulations requiring any alcoholic beverage container*  
24 *sold within this state, that contains an alcoholic beverage that*  
25 *meets the criteria provided in subdivision (c), to bear a prominently*  
26 *displayed label that provides the following information:*

27     ***(1) The alcohol content of the beverage.***

28     ***(2) The phrase "Attention: Contains Alcohol." The phrase shall***  
29 *be visible to an average consumer from at least five feet away.*

30     ***(b) The size, format, form, and placement of the label or labels***  
31 *shall be determined by the department.*

32     ***(c) Factors that may be considered by the department in***  
33 *determining whether an alcoholic beverage is subject to the*  
34 *regulation include, but are not limited to:*

35     ***(1) The alcoholic beverage is confused by customers with***  
36 *nonalcoholic beverages or products.*

37     ***(2) The alcoholic beverage contain additives in proportions***  
38 *that result in a product that possesses a character and flavor*  
39 *distinctive from traditional malt beverages, wine, and distilled*  
40 *spirits.*

1 (3) *The alcoholic beverage is prepackaged and made with*  
2 *gelatin, or other similar base, and has added sweeteners intended*  
3 *to solidify the product into a gelatinous, nonliquid state.*

4 (4) *The alcoholic beverage is prepackaged and contains high*  
5 *levels of caffeine and other additives and is marketed as an energy*  
6 *drink.*

7 (5) *The alcoholic beverage contains added sweetener or sugar*  
8 *substitutes.*

9 (6) *The alcoholic beverage contains added fruit flavors and*  
10 *other flavors that mask the taste of traditional alcohol products.*

11 (7) *The coloring, carbonation, and packaging of the alcoholic*  
12 *beverage is similar to those of nonalcoholic beverages.*

13 ~~SECTION 1. Article 4 (commencing with Section 25685) is~~  
14 ~~added to Chapter 16 of Division 9 of the Business and Professions~~  
15 ~~Code, to read:~~

16  
17 ~~Article 4. The Prevention of Youth Access to Alcoholic~~  
18 ~~Beverages with Special Appeal to Minors Act of 2007~~  
19

20 ~~25685. This article shall be known and may be cited as the~~  
21 ~~Prevention of Youth Access to Alcoholic Beverages with Special~~  
22 ~~Appeal to Minors Act of 2007.~~

23 ~~25686. The Legislature finds and declares all of the following:~~

24 ~~(a) Problems associated with alcohol consumption by those~~  
25 ~~under the minimum drinking age of 21 years constitute a public~~  
26 ~~health and safety emergency in California and the Nation. The~~  
27 ~~prevention of underage alcohol consumption is therefore an urgent~~  
28 ~~priority for the people of California.~~

29 ~~(b) The earlier a young person begins to consume alcoholic~~  
30 ~~beverages, the more likely it is that he or she will experience~~  
31 ~~alcohol problems throughout his or her life. Research has shown~~  
32 ~~that, compared with persons who wait until 21 years of age or older~~  
33 ~~to begin drinking, those who start to drink before 15 years of age~~  
34 ~~are at a far greater risk of alcohol problems later in life, including~~  
35 ~~alcohol-related motor vehicle crashes, assault, and other types of~~  
36 ~~injuries. Recent increases in alcohol consumption and binge~~  
37 ~~drinking among underage girls, including girls under the age of~~  
38 ~~15 years, emphasize the need for new initiatives to prevent youth~~  
39 ~~alcohol problems.~~

1     ~~(e) The sale, transfer, or furnishing of alcoholic beverages to~~  
2     ~~minors and the public possession of alcohol by minors is illegal~~  
3     ~~in California. Enforcement of laws designed to prevent access and~~  
4     ~~consumption of alcoholic beverages by minors is an urgent priority~~  
5     ~~for the state.~~

6     ~~(d) California and its governmental subdivisions have initiated~~  
7     ~~numerous programs and public awareness campaigns to prevent~~  
8     ~~alcohol problems in minors and to alert citizens to the dangers~~  
9     ~~associated with underage drinking. These efforts, which are~~  
10    ~~augmented by programs conducted by nongovernmental~~  
11    ~~organizations and individuals, are not sufficiently addressing the~~  
12    ~~public health emergency associated with underage drinking.~~

13    ~~(e) Research has established that exposure to alcohol advertising~~  
14    ~~influences young people's beliefs and intentions regarding~~  
15    ~~alcoholic beverages and that increased exposure to alcohol~~  
16    ~~advertising results in increased underage alcohol consumption.~~

17    ~~(f) Research has also established that some alcohol~~  
18    ~~advertisements have images, themes, slogans, and other content~~  
19    ~~that are highly attractive to young people and encourage them to~~  
20    ~~consume alcoholic beverages.~~

21    ~~(g) Alcoholic beverage products that research shows are highly~~  
22    ~~attractive to young people, including girls under the age of 15~~  
23    ~~years, are advertised and sold in California. These products,~~  
24    ~~sometimes referred to as flavored alcoholic beverages or~~  
25    ~~"alcopops," have added flavorings and sweeteners. "Alcopops"~~  
26    ~~have a relatively low alcohol content that makes them similar in~~  
27    ~~taste to fruit drinks, sodas, and other nonalcoholic beverages~~  
28    ~~popular with young people. Marketing of these products includes~~  
29    ~~traditional forms of advertising, product placement, labeling, and~~  
30    ~~nontraditional marketing techniques such as text messaging and~~  
31    ~~Internet promotions, including advertising on Web sites popular~~  
32    ~~with youth.~~

33    ~~(h) New alcohol products, in addition to alcopops, that have~~  
34    ~~potential appeal to young people are being introduced into the~~  
35    ~~market each year. These include gelatin-based products, food-based~~  
36    ~~alcohol products, alcohol mists, and beverages that contain alcohol,~~  
37    ~~caffeine, and other additives that may facilitate underage binge~~  
38    ~~drinking. Product labeling and packaging in some cases make it~~  
39    ~~difficult to determine whether these products contain alcohol and,~~  
40    ~~if they do, their alcohol content.~~

~~(i) Educators, parents, community leaders, and the public are not familiar with the types and extent of risks to the health and safety of California's young people associated with alcopops and other new alcohol products with potential appeal to young people.~~

~~(j) Underage drinking cost Californians an estimated \$7.3 billion dollars in 2005.~~

~~(k) In 2005, underage drinkers consumed 12.4 percent of all alcohol sold in California, totaling \$2.3 billion dollars in sales. These sales provided profits of approximately \$1.1 billion dollars to the alcohol industry.~~

~~(l) The alcohol industry paid \$\_\_\_ dollars in taxes and licensing fees in 2005, a small fraction of the revenue and profits received from alcohol sales derived from underage drinkers.~~

~~25687. (a) (1) For purposes of this article, "alcoholic beverage with special appeal to minors" means any alcoholic beverage that contains additives in proportions that result in a product that possesses a character and flavor distinctive from traditional malt beverages, wine, and distilled spirits and that is produced in a manner that a reasonable person knows or should know will promote consumption by youth.~~

~~(2) An "alcoholic beverage with special appeal to minors" includes, but is not limited to:~~

~~(A) A prepackaged alcoholic beverage made with gelatin, or other similar base, and added sweetener intended to solidify the product into a gelatinous, nonliquid state.~~

~~(B) A prepackaged alcoholic beverage that contains high levels of caffeine and other additives and is marketed as an energy drink.~~

~~(b) Factors that may be considered in determining whether an alcoholic beverage has special appeal to minors include, but are not limited to:~~

~~(1) Added sweetner or sugar substitutes.~~

~~(2) Added fruit flavors and other flavors that mask the taste of traditional alcohol products.~~

~~(3) Coloring, carbonation, and packaging that are similar to nonalcoholic products that are appealing to and are consumed by minors.~~

~~(4) Per capita consumption of the alcoholic beverage by minors that is higher than the per capita consumption by adults.~~

~~25688. (a) Beer manufacturers and wholesalers shall submit to the department information regarding each product and brand~~

1 to be distributed in California that is relevant to the determination  
2 of whether the product or brand is an alcoholic beverage with  
3 special appeal to minors.

4 (b) (1) The department shall review all information submitted  
5 to the department pursuant to subdivision (a), and all other  
6 alcoholic beverage products and brands sold in the state, to  
7 determine whether a product or brand is an alcoholic beverage  
8 with special appeal to minors.

9 (2) On or before \_\_\_\_\_, 2008, the Department of Alcoholic  
10 Beverage Control shall publish a list, available on the department's  
11 Internet homepage and updated on an annual basis, of those  
12 products or brands that the department has determined to be  
13 alcoholic beverages with special appeal to minors.

14 (c) All information and records provided to the department  
15 pursuant to subdivision (a) are confidential in nature and shall not  
16 be disclosed by the department. Information required under  
17 subdivision (a) are not public records under the California Public  
18 Records Act, as described in Chapter 3.5 (commencing with  
19 Section 6250) of Division 7 of Title 1 of the Government Code  
20 and shall not be open to public inspection.

21 25690. (a) In addition to any federal labeling requirements,  
22 any alcohol with special appeal to minors container sold within  
23 this state bear a label that includes the alcoholic content by volume  
24 of the beverage located on the front of the container and the  
25 statement "Warning: Contains Alcohol."

26 (b) This section shall become operative \_\_\_\_\_.

27 25692. Notwithstanding any other provision of law, any retail  
28 licensee engaged in the sale of alcoholic beverages with special  
29 appeal to minors shall not:

30 (a) Display an alcoholic beverage with special appeal to minors  
31 within five feet of any nonalcoholic beverage.

32 (b) Place for sale an alcoholic beverage with special appeal to  
33 minors in a refrigerated cooler or tub.

34 (c) Sell motor vehicle fuel.

35 (d) Place or display self-illuminated advertising for alcoholic  
36 beverages with special appeal to minors in the windows of the  
37 premises or on the interior or exterior walls of the premises.

38 25694. The department shall promulgate regulations and rules  
39 as may be necessary to carry out the this article.

1     ~~SEC. 2. The Legislature finds and declares that Section 1 of~~  
2     ~~this act, which adds Section 25696 to the Business and Professions~~  
3     ~~Code, imposes a limitation on the public's right of access to the~~  
4     ~~meetings of public bodies or the writings of public officials and~~  
5     ~~agencies within the meaning of Section 3 of Article I of the~~  
6     ~~California Constitution. Pursuant to that constitutional provision,~~  
7     ~~the Legislature makes the following findings to demonstrate the~~  
8     ~~interest protected by this limitation and the need for protecting~~  
9     ~~that interest:~~

10    ~~In order to allow the Department of Alcoholic Beverage Control~~  
11    ~~to fully accomplish its goals, it is imperative to protect the interests~~  
12    ~~of those persons submitting information to the department to ensure~~  
13    ~~that any business or trade secrets that are required to be submitted~~  
14    ~~by those persons by this act be protected as confidential~~  
15    ~~information.~~

16    SEC. 3. No reimbursement is required by this act pursuant to  
17    Section 6 of Article XIII B of the California Constitution because  
18    the only costs that may be incurred by a local agency or school  
19    district will be incurred because this act creates a new crime or  
20    infraction, eliminates a crime or infraction, or changes the penalty  
21    for a crime or infraction, within the meaning of Section 17556 of  
22    the Government Code, or changes the definition of a crime within  
23    the meaning of Section 6 of Article XIII B of the California  
24    Constitution.